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BAKER, Chief Judge

Appellant-defendant Michael Dunn appeals his conviction for Criminal Deviate Conduct,¹ a class B felony, claiming that the conviction violated the principles against double jeopardy under the United States and Indiana constitutions because he had been acquitted of a separate criminal deviate conduct charge in a previous trial. Dunn further contends that the conviction must be set aside because it could not be ascertained whether the jury in this case used the same alleged conduct to reach a guilty verdict as the previous jury had used in reaching a not guilty verdict in the previous trial.

Dunn further contends that his conviction must be reversed because the trial court improperly permitted the State to elicit testimony on cross-examination concerning violations that Dunn committed while in the military, and his ultimate discharge from the Marine Corps. Finally, Dunn claims that the trial court abused its discretion in refusing his tendered instruction that set forth a definition of force. Finding no error, we affirm the judgment of the trial court.

FACTS

Dunn and K.G. met in Plainfield and began a romantic relationship in July 2005. K.G. gave Dunn a key to her apartment, but the two broke up in October 2005. Because K.G. believed that Dunn was “too controlling,” she changed her locks after the relationship ended. Tr. p. 106-09, 111-13. At some point, K.G. lived at a women’s shelter and obtained a protective order against Dunn. However, the two continued seeing each other over the next several months.

¹ Ind. Code § 35-42-4-2.

On February 15, 2006, Dunn “surprised” K.G. by appearing in her bathroom as she showered. Id. at 123-24, 127-28, 305-06. After K.G. finished showering, Dunn grabbed K.G.’s wrist and ordered her out of the bathroom. Dunn then pushed K.G. to the floor and told her that if she would not give him “what he wanted, he would take it from her.” Id. at 129. Dunn loosened his pants and applied his weight to K.G.. Although K.G. told Dunn to “stop,” he removed her pants, pushed her legs apart and forced her to have sexual intercourse with him. Id. at 134. Thereafter, Dunn pushed K.G. to her knees and compelled her to perform fellatio.

Several hours later, while Dunn and K.G. were lying in her bed, Dunn stated that he wanted “more sex.” Id. at 141. When K.G. refused, Dunn started to choke her. After Dunn stated that he could easily kill K.G., the two engaged in sexual intercourse, and K.G. again was forced to perform fellatio on Dunn. Dunn remained at K.G.’s residence until approximately 3:00 p.m. on February 16.

At approximately 6:00 that evening, police officers arrived at K.G.’s home to do a welfare “check” on her because they had seen Dunn in the neighborhood and were aware of the protective order. Id. at 156. Although K.G. did not volunteer to the police officers that Dunn had raped her, she nodded affirmatively that he had done so in response to the officers’ questions. Later that evening, Dunn was arrested and charged with two counts of rape, two counts of criminal deviate conduct, burglary, and criminal confinement.

Following a jury trial that concluded on October 26, 2006, Dunn was found not guilty on one count of criminal deviate conduct and not guilty of burglary. The jury was unable to return a verdict with regard to the rape counts, the remaining criminal deviate

conduct charge, and criminal confinement. Thereafter, the State dismissed one of the rape charges.

A second jury trial commenced on January 4, 2007. At some point, Dunn testified on direct examination that he was a former member of the National Guard and the United States Marine Corps. Dunn testified about the nature of his military service and stated that he and K.G. engaged in consensual sex on the night in question. On cross-examination, the prosecutor asked Dunn about his discharge from the Marine Corps, and suggested that Dunn's separation from the military was involuntary. Dunn objected, claiming that the prosecutor's question amounted to improper impeachment. In response, the State argued that Dunn had "opened the door" to such questioning. The trial court overruled Dunn's objection and permitted the questioning to resume. Id. at 356. Dunn admitted that he was given a discharge marked with the code "RE 4" as a result of two minor disciplinary infractions. Id. Although Dunn was honorably discharged from the Marine Corps, his service was terminated early and was not permitted to reenlist. The prosecutor then inquired about the nature of the infractions, and Dunn objected on relevancy grounds. The trial court overruled the objection, determining that such evidence amounted to proper impeachment. However, Dunn did not further describe the infractions.

Following the presentation of the evidence, Dunn offered an instruction that defined the term "force," which read: "Force is defined as the use of strength, power, or violence, applied to one's actions in order to accomplish one's ends." Appellant's App. p. 11. The trial court refused the instruction, stating in relevant part that "the jury can use

their own common sense, look at the plain and ordinary meaning of force, counsel can . . . try to persuade them as to what they believe force is.” Tr. p. 400.

The jury found Dunn guilty on one count of rape and one count of criminal deviate conduct. Thereafter, on August 1, 2007, Dunn was sentenced to serve 2920 days of incarceration on each count, with the sentences to run concurrently. Dunn now appeals.

DISCUSSION AND DECISION

I. Double Jeopardy

Dunn argues that his conviction for criminal deviate conduct must be reversed because he “was tried twice on [that] charge.” Appellant’s Br. p. 9. Dunn claims that because no distinction was made to the jury as to which alleged act of criminal deviate conduct formed the basis for the charge at issue in the second trial, “the jury was left to use either instance of conduct in order to justify its guilty verdict in the second trial.” *Id.* at 9. Therefore, Dunn claims that he was subjected to double jeopardy under both the United States Constitution and the Indiana Constitution.

In resolving this issue, we note that the Fifth Amendment to the United States Constitution provides that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” This protection applies to successive punishments for the same criminal offense. United States v. Dixon, 509 U.S. 688, 696 (1993). Under this analysis, the term “same criminal offense” means any two offenses that cannot pass the “same-elements” test. *Id.* This test, sometimes referred to as the Blockburger² test, asks

² Blockburger v. United States, 284 U.S. 299 (1932).

“whether each offense contains an element not contained in the other; if not, they are the ‘same offense’ and double jeopardy bars additional punishment.” Id.

In this case, the analysis is not applicable because Dunn was not prosecuted twice for the same offense. More particularly, Dunn was charged with two separate counts of criminal deviate conduct. He was acquitted on one count, and the jury could not reach a verdict on the other count. When that second count was submitted to a different jury, he was found guilty. Hence, the jury convicted Dunn of a wholly distinct act of criminal deviate conduct, and he cannot successfully claim that it was improper to conduct a second trial merely because a jury was unable to reach a verdict in the first trial. As a result, Dunn’s federal double jeopardy claim fails.

Dunn also maintains that his conviction is barred under Indiana Double Jeopardy Clause, which provides that “No person shall be put in jeopardy twice for the same offense.” Ind. Const. Art. I, Sec. 14. This provision prevents the State from proceeding against a person twice for the same criminal transgression. Richardson v. State, 717 N.E.2d 32, 49 (Ind. 1999). As set forth in Spivey v. State, 761 N.E.2d 831, 832 (Ind. 2002), “two offenses are the ‘same offense’ in violation of the Indiana Double Jeopardy Clause if, ‘with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.’” (quoting Richardson, 717 N.E.2d at 49) (emphasis in original).

Under the actual evidence test, a reviewing court examines the evidence presented at trial to determine whether there is a reasonable probability that the evidentiary facts

used by the fact-finder to establish one offense were also used by the fact-finder to establish another offense. Spivey, 761 N.E.2d at 833. In other words, the actual evidence test requires evidence of both challenged offenses to be presented to the same fact-finder. This cannot occur in a successive prosecution context because the two cases will have been tried separately before two different fact-finders. See Thomas v. State, 764 N.E.2d 306, 310-11 (Ind. Ct. App. 2002) (observing that the actual test cannot be applied in the successive prosecution context because there is no actual evidence to compare). Thus, the actual evidence test can be applied only to multiple punishment cases and not to successive prosecution cases.

As noted above, Dunn was originally charged with two counts of criminal deviate conduct. He was acquitted of one of those charges at the first trial and convicted of the other at the second trial after the jury was unable to reach a verdict at the first trial. However, different evidence was required to prove each charge because those charges were the result of two separate acts of criminal deviate conduct. More particularly, the facts show that at least two acts of oral sex occurred, and the evidence suggested that Dunn forced K.G. to commit those acts. The first jury did not believe that the State proved a lack of consent for at least one of those acts, but such a finding did not forever bind a second jury from finding a lack of consent as to the other charge. In other words, different evidence was required to establish each charge. Thus, we cannot say that there was a double jeopardy violation under the Indiana Constitution.

II. Inconsistent Verdicts

In a related issue, Dunn argues that the verdicts were inconsistent. In essence, Dunn claims that the acquittal on one count of sexual deviate conduct and a conviction on the other are irreconcilable and amount to fatally inconsistent verdicts because “there is no indication from the record as to which act of alleged criminal deviate conduct forms the basis for the second jury’s verdict.” Appellant’s Br. p. 13.

Although this court reviews verdicts for consistency, “perfect logical consistency” is not required. Parks v. State, 734 N.E.2d 694, 700 (Ind. Ct. App. 2000). It is not within this court’s province to attempt to interpret the thought process of the jury in arriving at its verdict. Id. As triers of fact, the jurors may attach whatever weight and credibility to the evidence they believe is warranted, and the jury is free to believe portions of a witness’s testimony but disregard other portions of the same testimony. Id. Therefore, when an appellate court reviews a claim of inconsistent jury verdicts, it will take corrective action only when the verdicts are “extremely contradictory and irreconcilable.” Jones v. State, 689 N.E.2d 722, 724 (Ind. 1997). This is an extremely rare occurrence; in fact, only once has an Indiana court found a jury’s verdicts in a criminal case to be irreconcilably inconsistent. Owsley v. State, 769 N.E.2d 181, 183-85 (Ind. Ct. App. 2002).

In general, when a defendant is acquitted of some charges but convicted of others, the results will survive a claim of inconsistency where the convictions are supported by sufficient evidence. Edwards v. State, 730 N.E.2d 1286, 1290 (Ind. Ct. App. 2000). As our Supreme Court observed in Wallace v. State, 492 N.E.2d 24, 25 (Ind. 1986),

“[s]imply because the jury might not have found sufficient facts to convict on one charge, and this we do not even know, does not mean they could not find sufficient facts to convict on another charge based on different underlying conduct.” In light of the above, Dunn’s claim that his conviction for criminal deviate conduct must be set aside on the grounds of inconsistent verdicts fails.

Even assuming *arguendo* that an inconsistency might exist between the verdicts of two separate juries, there was sufficient evidence to support at least one conviction of criminal deviate conduct and thus defeat Dunn’s claim. Specifically, K.G. testified that Dunn forced her to her knees and demanded that she “prove her love” for him by performing oral sex. Tr. p. 135. Dunn grabbed the back of K.G.’s head and forced her down until his penis was in her mouth. *Id.* at 135-36. According to K.G., during the second sexual encounter in the bedroom, Dunn again demanded oral sex and again told her that she “needed to prove her love” for him. *Id.* at 145. This demand occurred shortly after Dunn had choked K.G. and suggested that he could easily kill her. *Id.* at 143-45. It is apparent that either of these incidents could be classified as intentionally causing another to perform deviate sexual conduct by force or the imminent threat of force. Hence, the evidence was sufficient to sustain a conviction of criminal deviate conduct in accordance with Indiana Code section 35-42-4-2(a). Therefore, because there was evidence to sustain the conviction, we cannot conclude that the verdict of not guilty following the first trial was inconsistent with the guilty finding of a different jury after a second trial.

III. Cross-Examination

Dunn also claims that his conviction must be reversed because the trial court erred in permitting the prosecutor to elicit testimony from him on cross-examination regarding the nature of his discharge from the Marine Corps and the disciplinary infractions contained in his service record. In essence, Dunn contends that the conviction must be set aside because that evidence was irrelevant and prejudicial.

In resolving this issue, we initially observe that a trial court has broad discretion in ruling on the admissibility of evidence. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). We will reverse a trial court's ruling on the admissibility of evidence only when it constitutes an abuse of discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id. We note that when a party injects an issue into a trial during direct examination and leaves the finder of fact with a false or misleading impression of the facts as stated, that party runs the risk of "opening the door" to the admission of otherwise inadmissible evidence on cross-examination. Tawdul v. State, 720 N.E.2d 1211, 1217-18 (Ind. Ct. App. 1999).

As noted above, Gunn described the nature of his military service while a member of the National Guard and United States Marine Corps during direct examination. Tr. p. 302, 308, 314-15, 324-25. Thereafter, on cross-examination, the prosecutor asked Dunn to concede that his separation from the Marines was premature and involuntary. After doing so, Dunn also acknowledged—over objection—that he had committed certain

disciplinary infractions. Id. at 356. However, the nature of those infractions was not disclosed to the jury. Id.

Although Dunn argues that the trial court erred in admitting such alleged irrelevant and prejudicial evidence at trial, it is apparent that Dunn did, indeed, “open the door” to the admission of such evidence. See Pearish v. State, 344 N.E.2d 296, 299 (Ind. 1976) (holding that if an individual mentions his military service during direct examination, he may be questioned regarding the nature of his discharge from the service on cross-examination). As a result, Dunn’s claim fails.

IV. Jury Instructions

Dunn next claims that his conviction must be reversed because the trial court abused its discretion in refusing to give his tendered instruction defining the term “force.” Appellant’s Br. p. 17. Dunn claims that his proposed instruction should have been given because it adequately stated the law and the evidence at trial supported the giving of the instruction.

We initially observe that the purpose of a jury instruction is to inform the jury of the law applicable to the facts without misleading it, and to enable the jury to comprehend the case clearly and arrive at a just, fair, and correct verdict. Overstreet v. State, 783 N.E.2d 1140, 1163 (Ind. 2003). We review a trial court’s refusal to give a tendered instruction for an abuse of discretion. Springer v. State, 798 N.E.2d 431, 433 (Ind. 2003). We consider: (1) whether the instruction correctly sets out the law; (2) whether there is evidence in the record to support giving the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions. Id. Before a

defendant is entitled to a reversal and a new trial, he must affirmatively show that the instructional error prejudiced his substantial rights. State v. Eaton, 659 N.E.2d 232, 235 (Ind. 1995). Moreover, where terms are in general use and can be understood by a person of ordinary intelligence, they need not be defined. Roche v. State, 690 N.E.2d 1115, 1128 (Ind. 1997).

In our view, the trial court correctly determined that the jury would understand a term such as “force” in these circumstances without further explanation. K.G. testified that Dunn “forced” her to have sexual intercourse and “forced” her to perform fellatio. Tr. p. 130-35, 141-45, 168. An adult of reasonable intelligence would have no difficulty understanding this term. Although Dunn seems to imply that the testimony presented at trial suggested that there were elements of duress applied to effectuate the act of sexual intercourse, there is no suggestion that individuals commonly use the terms “force” and “duress” interchangeably. Therefore, we conclude that the trial court properly refused Dunn’s tendered instruction.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.